

NORTHWEST EXPLORATION CO.

IBLA 83-10

Decided May 23, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer. M 54897.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

Where a first-priority oil and gas lease applicant fails to submit, within 30 days of receipt of notice, the signed offer, and rental, and, where the offer is signed by an attorney-in-fact, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the rights of the next priority applicant attach immediately. However, a BLM decision issued prior to the expiration of the 30-day period, which rejects an offer for failure to provide the power of attorney or reference to a serial number, is premature and must be set aside where the applicant subsequently provides that information within the 30-day period.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for applicant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Northwest Exploration Company (Northwest) appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated September 8, 1982, rejecting its simultaneous oil and gas lease offer, M 54897, for failure to provide a copy of a power of attorney or provide a reference to a serial number which would show that such a power of attorney was on file with BLM.

Northwest filed a simultaneous oil and gas lease application with BLM for parcel MT 74 in the March 1982 filing period which was drawn with first

priority. The application was signed by D. J. Eckelberg, vice president of the company. By notice given by BLM dated August 23, 1982, and received by Northwest on August 27, 1982, Northwest was allowed 30 days from receipt of the notice within which to furnish BLM the first year's rental and a signed lease offer for simultaneous oil and gas lease M 54987. The rental and signed lease form were received by BLM on September 2, 1982. The offer was signed by Betty R. Burnett as attorney-in-fact on behalf of Northwest. By decision dated September 8, 1982, the offer was rejected by BLM because neither a power of attorney nor reference to a serial number under which an authorization for Betty R. Burnett was previously filed accompanied the offer.

By letter received September 17, 1982, Northwest notified BLM that the qualifications of Betty R. Burnett as attorney-in-fact for Northwest were on file with that office under serial number Montana-065500. ^{1/} Subsequently, Northwest filed a notice of appeal received by BLM on September 22, 1982.

The regulations under 43 CFR 3112.4-1(a) allow the first-qualified applicant 30 days from receipt of notice in which to return the lease offer and the first year's rental to the proper office of the BLM. Under 43 CFR 3112.4-1(b), an attorney-in-fact may sign the lease offer and pay the rental. However, any attorney-in-fact signing a lease offer or paying the rental must "file, together with the offer and/or rental, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed."

Appellant presents a number of arguments on appeal. First, it argues that 43 CFR 3112.4-1(b) is not applicable to its situation. It states that the purpose of the regulation is to guard against fraudulent and deceptive practices by lease filing services, and, thus, it is not applicable where, as in this case, there is no filing service involved. Appellant also asserts that the regulation should be applicable only where both the application and the lease offer are signed by the attorney-in-fact. Appellant points out that in this case the application was signed by an officer of the company.

Appellant's position is that the attorney-in-fact by the signature certifies compliance with the regulatory requirements. Appellant believes that under the reasoning in Evelyn Chambers, 67 IBLA 280 (1982), the attorney-in-fact in this case was not required to submit the power of attorney or reference the serial number. In Chambers the Board held that where an employee not in the business of providing assistance to participants in a Federal oil and gas lease program signs an application as an attorney-in-fact, that person is not an agent required to file agent statements under the 1981 regulations.

While appellant's arguments on this point are not without some merit, we cannot ignore the plain language of the regulation in question. 43 CFR 3112.4-1(b) states that "[a]ny attorney-in-fact signing a lease offer * * *

^{1/} The power of attorney had been filed by Northwest with BLM and had been assigned the serial number effective Jan. 18, 1982. There is no question concerning the sufficiency of the power of attorney.

shall file, together with the offer * * *, a copy of his/her power of attorney or reference to the serial number * * *." (Emphasis added.) Thus, the regulation itself does not place any limitations on which attorneys-in-fact must file. The language is all inclusive. We find, contrary to appellant's arguments, that 43 CFR 3112.4-1(b) is applicable in this case.

Appellant then argues that even if 43 CFR 3112.4-1(b) is applicable, it complied with 43 CFR 3112.4 in this case. We agree. Appellant's analysis of the regulation is that an applicant has the entire 30-day period set forth in 43 CFR 3112.4-1(a) in which to comply with the regulatory requirements. Appellant asserts that reading 43 CFR 3112.4-1(a) and (b) together, the logical conclusion is that the lease offer, the rental, and the power of attorney must all be filed within the 30-day period. Appellant contends that if all the requirements are met within the 30 days, the regulatory language that the power of attorney be submitted "together with" has been satisfied. Appellant argues that the offer, rentals, and power of attorney are not required to be filed at the same time.

The chronology of relevant events in this case is that on August 27, 1982, appellant received notice that the lease offer and rental were required to be filed within 30 days. BLM received the rental and the lease offer signed by the attorney-in-fact on September 2, 1982. BLM's September 8, 1982, decision was received by appellant on September 13, 1982. On September 17, 1982, BLM received appellant's letter referencing the serial number for the power of attorney.

[1] Failure to file that which is required by 43 CFR 3112.4-1, within 30 days results in automatic disqualification of an applicant's right to submit an offer. The disqualification is automatic and affords no latitude for any exercise of discretion by BLM. Susan Dawson, 35 IBLA 123 (1978), aff'd, Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980). The regulation advances the priority of the next drawee and precludes the application of 43 CFR 1821.2-2(g), allowing for Departmental discretion on acceptance of late filed documents, because the rights of a third party have intervened. Zenith S. Merritt, 46 IBLA 24 (1980); Donald E. Jordan, 35 IBLA 290 (1978); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). In the present case, however, the facts reveal no failure to file. Within 30 days of receipt of notice, appellant filed everything required by the regulations.

Although it could be argued that the regulation contemplates that the power of attorney must be filed at the same time as the offer and/or rental, appellant points out that the basic policies underlying the requirements of the regulations are to protect the rights of the second- and third-priority applicants and to avoid fraud. It asserts that a ruling in its favor does not undermine either. Appellant states that only after the expiration of the 30-day period would the rights of the second- and third-priority applicants be affected. Also, appellant asserts that since this case does not involve priority in the drawing, no advantage could be gained by appellant or the attorney-in-fact in this situation. It states that the lease, if issued, would be issued solely in appellant's name.

In this case we see no reason to impose a restrictive interpretation to a regulation, when appellant has, in fact, complied with the spirit of

the regulation by providing all that was required within the regulatory time limits. 2/ In fact, 43 CFR 3112.4-1(a) provides that "[t]imely receipt of the properly signed lease and rental constitutes the applicant's offer to lease." (Emphasis added.) Such language contemplates that an applicant has 30 days in which to comply with the regulations. Thus, an applicant could return the signed lease on day one and the rental on the 30th day and be in compliance with the regulations.

We would characterize the action of BLM in this case as premature. Although at the time it issued its decision, appellant had not complied with the regulation, the time for compliance had not expired. 3/ For the above-stated reasons, we set aside the BLM decision and remand the case for issuance of the lease to appellant, all else being regular.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is remanded to BLM for further action consistent with this opinion.

Bruce R. Harris
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

2/ We note that appellant raises a valid point in its statement of reason when it questions the logic of 43 CFR 3112.4-1(b) referring to a qualification file serial number. The former regulation relating to filing by reference, 43 CFR 3102.2-1(c), was deleted in the Feb. 26, 1982, revisions of 43 CFR Part 3102. However, 43 CFR 3112.4-1(b) was not revised, and it continues to refer to a qualifications file serial number. Appellant states at page 9 of its statement of reasons:

"Certainly it is questionable as to what type of qualification files, if any, are being maintained, or retained by the BLM under the new regulations. Since all qualification files were maintained under the same Serial Number M-06550, the requirement that a reference be made on the offer signed by an attorney-in-fact to that number seems an act of needless repetition."

3/ In no manner do we intend to impose any duty on BLM to notify one filing under 43 CFR 3112.4-1 that its filing is deficient in order to allow one to complete its required filings within 30 days. It just so happens in this case that the BLM decision did provide appellant with timely notice of the deficiency such to allow it to provide the necessary information within the 30 days.

ADMINISTRATIVE JUDGE IRWIN DISSENTING:

I think appellant's policy arguments are plausible. I think it is also plausible, as note 2 of the majority opinion implies, that the requirement to file a reference to the serial number under which a power of attorney is filed is vestigial. But neither overall policies nor oversights in amending regulations to implement those policies can overcome the plain language of 43 CFR 3112.4-1(b): "Any attorney-in-fact signing a lease offer * * * on behalf of the prospective lessee shall file, together with the offer * * * a copy of his/her power of attorney or reference to the serial number under which such authorization is filed * * *." I cannot construe "together with" to mean any time within the same 30-day period. I would construe it to mean the power of attorney or reference must accompany the lease offer. Ensearch Exploration, Inc., 70 IBLA 25 (1983).

Will A. Irwin
Administrative Judge

